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THE FEASIBILITY OF ELABORATING INTERNATIONAL INSTRUMENTS, INCLUDING CONVENTIONS, AGAINST ORGANIZED TRANSNATIONAL CRIME

Background document

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INTRODUCTION

1. The present report is designed to afford an overall appraisal of prospects for international cooperation in the struggle against transnational organized crime - and in particular to consider whether it is feasible to elaborate international instruments, including a convention against transnational organized crime. It bears reiterating that the ultimate objectives of international cooperation are to ensure: (a) that transnational criminal organizations encounter a high level of risk whatever home country they operate from and in whatever host countries they transact business; (b) that legitimate industries can offer strong resistance to efforts at infiltration and takeover by transnational organized crime; (c) that Governments, the commercial sector, and the criminal justice system are resistant to corruption and violence by transnational criminal organizations; and (d) that the activities of transnational criminal organizations are gradually circumscribed and ultimately eliminated.

2. Therefore, the overall goals are to make the environment for transnational criminal organizations hostile and inhospitable, to infiltrate, disrupt, and destroy the network structures on which many of these organizations are based, and to make continued transnational criminal activities as difficult and as costly as possible.

3. Other background documents submitted to the Ministerial Meeting have concentrated on the rationale for cooperation, the content of cooperation and the steps that have to be taken to promote greater harmonization of national legislation. The emphasis here, in contrast, is on the form of cooperation and, in particular, on the relative merits of bilateral and multilateral approaches in moving towards a regime that will be hostile to transnational organized crime.

4. Although each form of cooperation has its strengths and its weaknesses, bilateral and multilateral approaches are not mutually exclusive. While there are important differences of emphasis between them, each contributes in important ways to more vigorous criminal justice systems and a more effective law enforcement environment to deal with the threat from transnational criminal organizations. For the most part, bilateral, regional, and global approaches can be regarded as overlapping strategies that generally complement each other. Indeed, a multilevel approach of this kind tends to have a synergistic effect, especially when such cooperative ventures feed back into the national level and encourage States to develop domestic law that is consistent with the obligations they have accepted internationally.

5. There are rather different assumptions underlying bilateral cooperation on the one hand and multilateral cooperation on the other - especially when an effort is made to engage in global forms of multilateral cooperation. The bilateral approach is based on what might be termed an evolutionary model of cooperation, in which there is a gradually thickening web of bilateral linkages. The process is an incremental one, involving careful consolidation and gradual extension of the norms, mechanisms, and instruments of cooperation. The thickening web of bilateral cooperation works from the bottom up; the approach is deeply rooted in notions of the feasible and the practical. The ultimate goal is not ignored, but there is a clear recognition that it will take a long time to reach it. Underlying bilateral approaches is the belief that the best way to proceed is by building on convergent interests between two States with similar problems and a similar level of commitment to meeting them. Effectiveness is largely a matter of will and this is best manifested when States are determined to engage in intense and sustained cooperation to meet their common goals. At the same time, the existing bilateral mutual assistance and extradition treaties and various other forms of assistance offer a model of what might be done on a more ambitious scale.

6. At the other extreme there is what might be termed a comprehensive approach to international cooperation. It is based on the logic that the challenge is a global one; consequently the best response

is also one that is extensive in scope, multilateral in form and, as far as possible, global in reach. Moreover, there is an urgent need to bring a higher degree of order to a situation that may look like "a rather untidy mix of global, regional, and bilateral arrangements, established without a great deal of thought given to the overall pattern".* A multilateral approach would help to rectify this. Cooperation has grown up in incremental steps and without any overall design, but is now at a point at which the process requires some planning and regularization, in particular through more comprehensive and long-term approaches, such as the formulation and implementation of a convention against transnational organized crime. The key assumption of the multilateral approach is that drastic problems demand far-reaching responses. And like most attempts at international reform, this approach confronts the traditional emphasis on the concept of national sovereignty. The real issue, however, is not the loss of sovereignty but whether States are prepared to sacrifice some of the formalities of sovereignty in order to prevent the real erosion that is taking place as a result of the activities of transnational criminal organizations. Like most visionary schemes, the multilateral approach focuses upon the end result and proposes the shortest and most direct route for reaching it. It is, in effect, a top down approach that is aware of the problems and difficulties but acknowledges a compelling logic that provides the impetus to overcome these.[1]

7. Although the most ambitious multilateral schemes tend to have a sense of global vision, this is not invariably the case with multilateralism. Some multilateral schemes are regional in scope. Efforts to create a "common judicial space" in regions such as Latin America and Western Europe, for example, offer an intermediate option. This more modest form of multilateralism attempts to extend bilateral cooperation to somewhat larger groups of like-minded States facing similar regional challenges from transnational organized crime. Although there is a recognition that the difficulties of cooperation often increase according to the number of States involved, this tends to be less of a problem where the States involved already have some kind of regional identity.

8. Against this background, the aim in this report is to examine the merits and shortcomings of bilateral and multilateral cooperative strategies in more depth. Section I looks at examples of bilateralism and offers an assessment of both the strengths and the weaknesses of this form of cooperation. Section II looks at multilateral approaches at the regional level, while in section III more ambitious forms of multilateral cooperation are considered, such as the elaboration of a possible convention against transnational organized crime. In section IV the main elements of such international instrument are outlined, not as a definitive proposal, but rather as a basis for discussion and further thought. Section V sets out some concluding comments on international cooperation directed against transnational criminal organizations.

I. A THICKENING WEB OF BILATERAL EFFORTS

9. Considerable progress has been made in the effort to internationalize and harmonize law enforcement efforts. Largely a reaction to the emergence of illicit drug trafficking as a global industry, this cooperation needs to be developed further in response to the increasingly diverse challenges posed by transnational criminal organizations.

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*The comment was made about police cooperation but has wider applicability. For the argument itself, see Malcolm Anderson, Policing the World: Interpol and the Politics of International Police Cooperation (Oxford), Clarendon Press, 1989), p. 33.

10. One way to achieve this is through the more vigorous pursuit of bilateral cooperation. There are many examples of such cooperation already in place, and more agreements are being signed every year. In addition, States are attempting to broaden the scope of their mutual assistance treaties. In January 1994, for example, the United Kingdom of Great Britain and Northern Ireland and the United States of America signed a Mutual Legal Assistance Treaty enabling each side to ask the other to search for and seize the proceeds of serious crime, including drug trafficking, to take statements from witnesses, provide documents and records, and transfer prisoners temporarily when they are to give evidence.

11. Efforts have also been made to provide assistance to the States in transition in Eastern Europe. Germany has signed treaties with the Czech Republic, Poland and Slovakia on cooperation in the suppression of organized crime. Russia too has been the recipient of considerable assistance, much of it bilateral, but some of it multilateral and coordinated through the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat. Indeed, one of the virtues of a bilateral forum is its flexibility: it is a form of cooperation which, even when it may be asymmetrical, could incorporate assistance to improve the balance between the countries concerned. It is also a form of cooperation in which there can be a very high degree of reciprocity.

12. A particularly good example of highly reciprocal bilateral cooperation - and one that has yielded very substantial dividends - is that between the United States and Italy. The United States-Italian Working Group on Organized Crime and Narcotics, formed in 1984 (extended to incorporate terrorism in 1986 and subsequently broadened to include Canada as an observer), is a model example of extensive bilateral cooperation. Indeed, "because of the new instruments - particularly mutual assistance treaties - legal barriers to the exchange of investigative material, including grand jury information and information collected by foreign authorities otherwise covered by the secrecy of the investigating magistrate, were eliminated, and it became possible to work together in ongoing cases".[2] This cooperation contributed to the disruption of the narcotics network established by the United States and Sicilian Mafias - the "Pizza Connection" - through an operation "in which law enforcement officers in Brazil, Canada, Germany, Italy, Spain, Switzerland and the United States all worked in concert for nearly a year, arrested more than a hundred individuals, and conducted an equal number of searches on a single day. In that same case, two Sicilian Mafia members, Tommaso Buscetta and Salvatore Contorno, cooperated with both the United States and Italian authorities and provided testimony in trials in both countries. That joint testimony tested the limits of each system, which have very different rules regarding immunity agreements, pre-trial disclosures and cross examination. Because of the new treaties and a desire to work together, those differences were successfully bridged".[3]

13. The case was indeed impressive for the degree of cooperation achieved not only at the prosecutorial level but also at the investigative level. Electronic surveillance was used to follow targets as they moved from one country to another. In addition, it proved possible to follow the money trail. More recent successes in a similar vein have included Operation Green Ice, an undercover money-laundering operation that revealed the links between the Sicilian Mafia and the Colombian drug cartels.

14. If law enforcement cooperation between Italy and the United States has been extremely successful, there are several factors that help to explain this: (a) both States had very similar assessments of the drug trafficking and organized crime problem and gave it a high priority; (b) both States had long experience in responding to organized crime at a domestic level and it was not too difficult to switch to a response at the international level; (c) cooperation involved not just a formal agreement, but sustained cooperation to implement that agreement. This gave it a dynamic quality and provided an opportunity for the two countries to display their mutual commitment to overcoming the inevitable problems and difficulties that arose; (d) it was a very tightly focused form of cooperation with specific aims and objectives and particular targets; and (e) the Working Group was chaired by the United States

Attorney General and the Italian Minister of the Interior, who has the responsibility for law enforcement in Italy. High-level involvement of this kind is crucial to keeping the group focused and to ensuring that agencies in both countries are receptive to the demands of cooperation.

15. These conditions are not always easy to replicate. Most other States have far less experience in dealing with organized crime at either the national or transnational level and therefore may not perceive the need for the depth of mutual commitment exhibited by Italian-United States cooperation. Consequently, not all bilateral agreements work so effectively or have such positive and beneficial results. In some cases, for example, asymmetry in law enforcement capabilities or asymmetrical commitments to cooperation can lead to a sense of frustration and disappointment.

16. These caveats notwithstanding, it is clear that bilateral cooperation can have very positive consequences in terms of law enforcement cooperation. If it does start to work effectively, however, bilateral cooperation can become a target for the transnational criminal organizations themselves. The Colombian cartels for example, did everything possible to disrupt bilateral cooperation between Colombia and the United States - especially after the 1979 Extradition Treaty. In effect, this Treaty meant that United States law enforcement capabilities could be used to compensate for the difficulties Colombia faced in prosecuting leading members of the cartels. The extradition of Carlos Lehder highlighted the dangers to other "kingpins" of the drug trade being unable to find safe havens. The reaction by the cartels was ferocious largely because the instrument of cooperation was effective.

17. Bilateral cooperation, with its incremental approach, has some real strengths. In particular, it is a highly flexible strategy that can be tailored to what the States involved see as their specific needs and objectives. Furthermore, the commitment of States to implementing the accord is likely to be stronger: each State has a very clear obligation to its partner and the obligation is precise rather than diffuse. And so long as attention is given to implementation, then bilateral cooperation can be enormously effective.

18. At the same time, there are some limitations or shortcomings associated with bilateral extradition and mutual assistance treaties. In the first place, although the web of bilateralism is gradually thickening, major gaps remain. Furthermore, the whole could prove to be less than the sum of its parts: there is an ad hoc quality about this form of cooperation that produces inefficiencies, lacks of coordination and overlapping when looking at it from an overall perspective. Another problem is that bilateral cooperation is consuming of both time and resources. It is especially difficult for smaller States, which have neither the resources nor the expertise to engage in multiple bilateral negotiations, to develop the instruments of cooperation. Even though the provision of model treaties makes this task somewhat easier, the lack of resources is likely to remain a powerful inhibition. The implication is that, although the web of bilateral cooperation will continue to thicken, it needs to be complemented by multilateral forms of cooperation.

II. MULTILATERAL COOPERATION AND REGIONAL INTEGRATION

19. Multilateral cooperation should not be seen simply as a compromise between various bilateral efforts. Rather, it is something that has significant benefits in its own right, as many regional arrangements have demonstrated. They can be understood as the criminal justice counterpart to the growth of economic and political integration in particular regions, such as Western Europe. Regional cooperation in judicial and criminal matters is the natural concomitant to efforts to achieve political and economic union, even though it involves some of the more sensitive and complex aspects of national sovereignty. In this sense, it can be understood as a spin-off (or spill-over) from broader political and economic processes - albeit based on the recognition that complete uniformity of national legislation is

neither feasible nor desirable. As has been observed, "The criminal law systems are all finely tuned to the specific characteristics of the different countries. This delicate equilibrium should not be disturbed, unless a substantial advantage is to be gained."[4] At the same time, regional cooperation is also an acknowledgement that something needs to be done in response to the increased regional vulnerabilities accompanying the opening of internal borders and the development of the single market.

20. Regional cooperation is also based on the recognition that, although transnational organized crime is a global problem, it takes different forms in different regions and countries. Indeed, a strong argument can be made that regional problems demand regional responses. This does not mean that such a response is a substitute for national legislation or global approaches. It is simply that the States of a particular region may face a relatively homogeneous challenge, which provides the basis for a concerted approach.[5] This may be the case in Europe, where there is increasing awareness of the threat posed by various criminal organizations. Indeed, the more overt the threat, and the more widely shared the threat assessment, the greater the prospects for a vigorous programme of cooperation.

21. There have already been some very positive regional initiatives, which have extended the bounds of cooperation beyond the purely bilateral.[6] These include the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.[7] This Convention contains far-reaching provisions allowing the signatories to criminalize laundering of the proceeds of non-drug-related crime. It was also extended beyond Europe to facilitate participation by countries such as the United States and Australia, which are not members of the Council but helped with the drafting of the Convention.

22. Another, more modest, regional initiative is the Caribbean Financial Action Task Force. As a result of the Caribbean Conference on Drug Money Laundering, held at Aruba from 8 to 10 June 1990, a series of recommendations for taking action against money-laundering was formulated. Some countries, however, have proved reluctant to take further action, not least because of the benefits they receive as tax havens, and progress has generally been slower than was initially anticipated.

23. More significant is the work of the Inter-American Drug Abuse Commission (CICAD) of the Organization of American States, which has initiated an action programme against the production and use of illicit substances and has adopted model legislation on money-laundering,[8] based largely on the recommendations of the Financial Action Task Force established by the Heads of State or Government of the Group of Seven major industrialized countries and the President of the European Commission of the European Union.

24. These efforts to achieve common judicial and security spaces, at least in relation to certain sectors of criminal activity such as drug trafficking and money-laundering, have their own logic.[9] At best, regional initiatives of this kind are relatively easy to formulate and implement, as the States in the region have a broad convergence of interest and relatively homogeneous needs and problems. On some occasions, however, as in the case of the Financial Action Task Force of the Group of Seven countries, the impulse for cooperation is evident in economic and political groupings that exceed the geographical contiguity of land borders. Once again, however, these States have similar needs and problems, which have enabled them successfully to develop a common approach in the area of international money-laundering.

25. These complementary, reinforcing initiatives provide an important supplement to bilateral cooperation. They are incremental exercises in multilateral cooperation, which in some cases seem to provide a useful framework for effective action against transnational criminal organizations. At the same time, under their influence, international cooperation against transnational organized crime takes on even

more of the quality of a patchwork quilt, put together without any coherent design. Moreover, they only deal with particular segments of criminal activity and do not deal with the whole range of illicit actions and transactions perpetrated by transnational criminal organizations.

26. It is nevertheless clear that multilateral arrangements of this kind "offer numerous advantages, not the least of which is that they may obviate the need to negotiate individual bilateral arrangements with large numbers of foreign governments".[10] Negotiation is relatively easy for large States with highly developed administrative structures; but, as suggested above, for smaller States with limited resources and expertise, multilateral instruments or forms of cooperation are much more cost-effective. They are also particularly useful where Governments are hostile or political relations inhibit direct bilateral cooperation. While political and ideological hostility is much less of a problem now that the cold war has ended, multilateral cooperation continues to offer opportunities for cooperation that simply would not be possible at the bilateral level. An additional advantage of multilateral cooperation is that it is less likely to be a target for counterattacks by organized criminal groups.

27. These advantages of multilateral cooperation should be viewed in conjunction with the patterns of ad hoc bilateral cooperation and what might be termed sectoral cooperation at the regional level.

III. TOWARDS A CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME: DESIRABILITY AND FEASIBILITY

28. In considering the prospects for a convention against transnational organized crime designed to go beyond a regional approach and encourage global application, several problems should be kept in mind.

29. The first difficulty with such a new instrument is its content. Similar conventions on terrorism and drug trafficking have been oriented toward a specific typology of crime. The question arises, therefore, whether a new international instrument on organized crime should cover the many crimes that transnational criminal organizations or domestic organized crime groups commit, or should focus on the way in which countries should respond to the threat posed by these organizations. The problem with concentrating on the crimes is that they are so extensive - and it is difficult to be all-embracing. The implication is that attention should be focused on the second aspect, that is the responsibility of Governments to respond vigorously to the challenge, building upon the experience developed in the process of elaboration, ratification and implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2) and starting from the already existing proposals on legislation and law enforcement methods covered in the Convention itself. The extent of international support for the Convention is extraordinary: over 100 States are parties to it. This Convention, thanks to the commitment and political will of such a large number of countries, has had a major impact in bringing about concerted action against drug trafficking.

30. One of the inherent difficulties with multilateral cooperation, as manifested in the development of instruments of the kind being discussed here, is the achievement of consensus. In effect, breadth of participation must not be achieved at the expense of depth and intensity of cooperation and it is essential to ensure that negotiation does not result in a diluted convention that falls short of establishing the provisions necessary for an effective response to transnational criminal organizations. What is needed now, actually, is a framework for international cooperation, within which States could proceed with bilateral cooperation in a more systematized and effective way. Such a framework would make it possible to bridge the gaps inherent in bilateral cooperation. For example, the Vienna Convention has given rise to a wave of legislative activity at the national level, supported by the legal assistance

programme of the United Nations International Drug Control Programme, as well as to the adoption of numerous bilateral and regional agreements that implement and further the Convention's provisions in fields of cooperation.

31. Another closely related problem inherent to multilateralism lies in the fact that it is far from clear precisely how multilateral the activities resulting from the convention would really be, especially where there are divergent assessments of the challenge. In one sense, a multilateral convention would provide a way of augmenting resources and mobilizing mutual support and assistance for what individual States are unable to do alone. It should however be underlined that multilateral responses to global problems can only work if each party makes sacrifices commensurate with those of others.

32. Avoiding this kind of obstacle requires not only a broad consensus on what needs to be done to carry on the fight against transnational criminal organizations but also a commitment to take whatever action is necessary, despite the cost. In the context of a convention, there are two dimensions: if it is to be effective, it needs States to join and subsequently to exhibit the will and capability to meet their obligations under the convention.

33. Nonetheless, if the consolidation of various instruments into an international convention against transnational organized crime may not meet with universal approval, some of the reasons can be found in the obstacles to cooperation that have already been discussed, combined with an innate conservatism. As has been noted: "Only if most countries were willing to re-examine some deeply entrenched legal procedures, and to recognize that their own traditional way of doing things was not necessarily the best or most effective approach to the problems in question, would the concepts of multilateral extradition and mutual assistance conventions become a reality."[11]

34. The elaboration of a new instrument could be linked to the establishment of an effective and reliable system for collecting information, sharing it at the global level and analysing it as a guide for more decisive action. Transnational organized crime operates secretly because of the very nature of its illicit activities. As a consequence, collecting data becomes very difficult. International action against transnational criminal organizations based only on assumptions and reports cannot, however, suffice. Better and more reliable indicators, to be universally adopted and used in reporting, are urgently needed. The possibility of an international clearing-house to collect and share more reliable information should also be looked into as a very valuable means of complementing international action.

35. It is true that the exchange and processing of electronic data have recently created a potential for greater harmonization of data collection systems, but they have also highlighted the differences in national reporting systems. The necessary financial and human resources are not always available to comply with the various international reporting requirements. However, data collected through questionnaires are often not the most recent, as the gathering process is quite lengthy. As there is still a gap between the tasks that lie ahead and the goals that have been attained, the international community should make special efforts to provide the necessary feedback and support in the collection, analysis and dissemination of reliable and timely information on the incidence, expansion and effects of organized transnational crime.

36. The elaboration of an international convention against transnational organized crime would bring other advantages too, representing an invaluable potential for universal adherence. First, the very act of negotiating a convention would have certain benefits. For example, it would focus attention on the problem. Although specific criminal organizations, such as the Colombian cartels and, more recently, the Russian organized crime groups, have been given considerable attention, the emergence of transnational criminal organizations as a generic threat posing problems in many respects exceeding

those of international terrorism has been relatively ignored. Indeed, there has been a paucity of both journalistic and scholarly analyses dealing with transnational criminal organizations and their activities as a problem faced not only by individual States but also by the international community as a whole. Negotiating a multilateral convention with global applicability would do much to rectify this. Indeed, a convention on transnational organized crime would be very important in symbolic terms, as it would represent the collective judgement of the international community that the problem has become sufficiently serious to demand concerted action in response. This could also have an important impact in terms of legitimizing national actions, including national legislation against the activities of transnational criminal organizations. In addition, the negotiation of a convention would lead to greater interaction among Governments and particular ministries in ways that could themselves lead to enhanced cooperation. Developing a knowledge of other negotiators can be important, particularly if these negotiators also have some role in the subsequent implementation of policy. Lastly, the negotiation process itself would help to identify the areas of consensus on the problem, its dimensions, and the main strategies for responding to it.

37. Secondly, once the convention was in place, it would have several positive effects: (a) it would provide a set of standards and expectations that the signatories would have an obligation to live up to. In a sense it would facilitate the exertion of peer pressure as a common effort of the international community in addressing the problem; (b) it would have an important regularizing effect and provide for a more standardized form of cooperation than does the extension of bilateral accords, each of which has its own distinctive features; (c) it would facilitate more systematic assistance in the areas of criminal justice and law enforcement, rather than the existing ad hoc approach; (d) it would provide guidance for a programme of implementation that would assist in the dual objectives of harmonizing law enforcement risk and making it more difficult for transnational criminal organizations to infiltrate legitimate business.

38. It is clear from the above that there are both advantages and disadvantages to a multilateral convention against transnational organized crime. The issue is not clearcut. If Governments do decide that the advantages outweigh the disadvantages, however, there are several other requirements that would have to be met to transform it from a theoretical possibility into a feasible and practical proposition. First, it would require a broad-based consensus on the seriousness of the challenge posed to nations and to the international community by transnational criminal organizations. A consensus of this kind appears to be developing - as is evident in the widespread (although still far from universal) adoption of regulations directed against money-laundering. The key to broadening this consensus is for Governments that are affected by transnational criminal organizations to recognize that they are not alone, and for Governments that are not currently the target of transnational organized criminal activity to understand that they are not immune, and that it may be only a matter of time before the problem impinges on them directly. Secondly, another crucial requirement is that the idea of elaborating a convention should have the unequivocal backing of most States. The more diverse this group of States is, the better, on the understanding that the convention should not be seen as an attempt by any particular grouping to impose required forms of behaviour on others with different levels of economic development or cultural traditions. The willingness of several highly committed States to give a high priority to successful implementation could create a bandwagon effect, encouraging others to join. A third requirement is that there should be a clear idea of the purpose and scope of the convention. It has to be carefully formulated in ways that specify the target (transnational criminal organizations and their members), the obligations that States incur (in terms of taking initiatives in their own national law, in positively responding to requests for assistance from others and in providing and exchanging information) and provisions for implementation (both procedural and substantive).

IV. OUTLINE OF POSSIBLE ELEMENTS FOR A NEW INTERNATIONAL INSTRUMENT

A. General principles

39. An internationally binding instrument, such as a convention, against transnational criminal organizations and their activities could first of all express concern about the threat posed by transnational criminal organizations and the urgent need for international cooperation to respond to a phenomenon endangering stability and security, the integrity of financial institutions, the international order, as well as the processes of democratization and development. Secondly, it could establish the principles underlying cooperation among countries in responding to transnational organized crime,* as well as emphasizing that existing instruments of cooperation would be integrated into the convention.

40. It would also be important to have a clear understanding of the characteristics of transnational organized crime, paying particular attention to its structural features and modus operandi. These could include, for instance, the following: the grouping together of a number of individuals; the profit-making goal; the use of violence, intimidation and corruption; the hierarchical link or personal relationships that make it possible to control closely the activities of the group; the economic control of whole territories; the laundering of illicit profits in order not only to organize other criminal activities but also to set up businesses (with the consequent effect of corrupting them); the great potential of expansion beyond national boundaries; and the tendency to organize international operations together with other groups of different nationalities.[12]

41. To enumerate all the crimes that these organizations commit would be almost impossible and the list would need to be constantly updated. Organized crime groups are opportunistic and become involved in all sorts of crimes, as long as they are profitable. These crimes do not qualify per se as organized crime activity. It would, nevertheless, be possible to draw up a non-exhaustive list of the criminal acts most frequently committed by organized criminal groups operating across national borders, such as: the theft of cultural property; trafficking in arms; illegal gambling; smuggling of illegal migrants; trafficking in women and children for sexual slavery; extortion; violence against the judiciary and journalists; corruption of government and public officials; trafficking in radioactive material; illicit infiltration of licit business; trafficking in body parts; trafficking in endangered species; transnational auto-theft; money-laundering; computer-related crimes; and international fraud. Crimes such as drug trafficking and piracy, which are already the object of specific conventions, would be purposely excluded.

42. There should also be general principles related to modalities of cooperation. For example, the need to respond with as much diligence and as many resources as possible, within the limits of overall constraints on resources and the other demands on national policy, to the growth in transnational crime and the emergence of transnational criminal organizations as the major perpetrators of these crimes. Another general principle could be that States should take action unilaterally and in cooperation with each other to fight against transnational crime and to disrupt, dismantle and destroy the transnational organizations commonly engaging in these activities. In addition, it could be established that efforts to

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*These principles are identified in the background documents on the most effective forms of international cooperation for the prevention and control of organized transnational crime at the investigative, prosecutorial and judicial levels (E/CONF.88/4) and on appropriate modalities and guidelines for the prevention and control of organized transnational crime at the regional and international levels (E/CONF.88/5).

implement national initiatives and international cooperation against transnational criminal organizations should be consistent with - or governed by - respect for human rights.

B. Specific provisions

43. Some or all of the following specific and detailed provisions should be included in the instrument:

(a) Serious efforts should be made to develop both substantive and procedural national legislation against transnational criminal organizations and their activities, in convergence with the legislation of other signatories;

(b) All available arrangements of international cooperation against transnational criminal activities should be used and existing measures at the regional level implemented on a larger scale;

(c) Regulatory measures and administrative regulations should be developed that would make the commercial and banking sectors more transparent and accountable and therefore less susceptible to infiltration by transnational criminal organizations;

(d) Concerted action should be taken against money-laundering* and the use of the proceeds of crime, including pressure on tax havens to tighten up their procedures and to cooperate in developing a higher level of transparency;

(e) Countries should assist each other by providing the persons, evidence and assets that are requested by a party to the convention, according to the principles contained in the United Nations Model Treaties on Extradition, on Mutual Assistance in Criminal Matters (including its Optional Protocol concerning the proceeds of crime) and on the Transfer of Proceeding in Criminal Matters;**

(f) Uniform and effective techniques of investigation and prosecution should be developed against transnational criminal organizations, including more sophisticated means of information-gathering, collection of evidence and analysis of financial flows and/or investigation of suspicious transactions and

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*Among the most relevant measures against money laundering taken at the regional and international levels are the following: the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna on 19 December 1988 (E/CONF.82/15 and Corr.2); the 40 recommendations of the Financial Action Task Force of the Group of Seven, adopted in 1990; the 21 recommendations of the Caribbean Financial Action Task Force, adopted at Aruba on 10 June 1990; the Council of Europe Convention on Laundering, Search and Confiscation of the Proceeds from Crime, adopted in Strasbourg on 8 November 1990 (European Treaty Series No. 141); the Council of the European Communities Directive on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, adopted on 10 June 1991 (91/308/EEC); and the Inter-American Drug Abuse Control Commission (CICAD) Model Regulations concerning Laundering Offenses connected to Illicit Drug Trafficking and Related Offenses, adopted by CICAD in March 1992 and by the Organization of American States General Assembly in June 1992 (OEA/Ser.L/XIV.2;CICAD/INF.58/92).

**See the annexes to General Assembly resolutions 45/116, 45/117 and 45/118. The Crime Prevention and Criminal Justice Branch is preparing manuals providing guidelines on how to implement these Model Treaties. For the advantages of using such instruments see the report of the Secretary-General on the most effective forms of international cooperation for the prevention and control of organized transnational crime at the investigative, prosecutorial and judicial levels (E/CONF.88/4).

specialized national investigative units should be set up to deal specifically with organized crime (E/CONF.88/4, paras. 19-24 and 29);

(g) Information should be exchanged in order to assist other signatories in the investigation, apprehension and prosecution of those engaged in transnational crime;

(h) Requests for judicial and other forms of technical assistance should be given a positive response, with a view to strengthening national criminal justice and law enforcement systems against transnational criminal organizations;

(i) Modalities should be considered to encourage States to implement the convention fully;

(j) Collective measures should be taken to ensure that there are no safe havens, and to avoid either tacit support for, or collusion with, transnational criminal organizations.

44. As regards judicial assistance, the State parties to the convention should try to ensure that assistance is provided in the most efficient and cost-effective ways. It would be useful, for example, to develop a central clearing-house for information on legislative and other measures taken at the national level, their effectiveness and shortcomings. Furthermore, meetings of the States parties held periodically at a senior political level would play a key role in the search for donors to provide developing countries and countries in transition with technology, especially in the area of computerization, high-speed data exchange and other forms of information technology. Efforts could also be made to coordinate training programmes to be conducted under the provisions of the convention.

45. Since the successful prosecution and adjudication of cases involving organized crime are hampered not only by the sophistication of this form of crime and by the fear of retribution for cooperating with the law enforcement agencies but also by divergent evidentiary rules in national laws, the convention could include standard guidelines in this field.[13]

46. The convention could also provide for the establishment, either at the national or the international levels, of special funds for economic compensation of victims of organized crime when compensation cannot be charged to the person responsible. Such funds would be partially subsidized by confiscated capital (Economic and Social Council resolution 1994/12, annex, para. 35).

47. The possibility could be foreseen of establishing international machinery to implement the convention. If necessary, similar machinery could also be established at the national level. The scope and ambitiousness of the machinery might vary, but it would probably include at least a designated point of contact for international cooperation under the terms of the convention.

48. State parties could also undertake to meet particular national reporting requirements for implementing the convention. In addition, they could be requested to produce annual assessments of trends in the development of transnational crime and transnational criminal organizations, calling upon outside specialists and national investigative bodies, as well as international agencies such as the International Criminal Police Organization (ICPO/Interpol). If resources permit, they could also engage in specific research analysis of particular areas of transnational crime.

49. The convention could establish a monitoring system, including provisions on periodic review and amendment procedures, to ensure that its provisions reflect changing patterns of transnational crime, as well as the reaction of transnational criminal organizations to international cooperation in criminal justice and law enforcement.

V. CONCLUSIONS

50. The international community is becoming increasingly concerned about the impact that transnational organized crime produces on national economies, international relations, stability, security and peace. The decisive action taken against this form of crime in many countries, as well as the attention devoted to it by the Commission on Crime Prevention and Criminal Justice and the legislative bodies of the United Nations, in particular the General Assembly and the Economic and Social Council, demonstrate that the issue is a major priority for Member States.[14]

51. The new responsibilities that Governments have to take on because of the escalation of organized crime and the demand for global strategies to combat it, draw attention to the need for effective instruments, bearing in mind that what is most needed is a comprehensive, multi-layered approach to international cooperation in criminal justice and law enforcement in the fight against transnational organized crime. Ideally, a truly effective international approach would be composed of a web of bilateral, regional and multilateral agreements complementing and promoting one another. In fact, bilateral and multilateral forms of cooperation are complementary rather than mutually exclusive, but whether international cooperation can evolve in ways that allow a response to transnational criminal organizations commensurate with the threat depends on the capacity of States to understand that criminal justice and law enforcement systems can no longer be viewed as purely national concerns. Ultimately the prospects for cooperation depend on recognizing that a new kind of threat demands a new kind of response, in which international cooperation plays a central role. Experience has shown the importance of adopting international instruments in order to enact global strategies of action when dealing with issues of a transnational nature. A very successful example is found in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2).

52. International cooperation is easier today than it was a few years ago. In fact, today there is a growing realization that States can only tackle the new forms and dimensions of crime effectively if they join forces. Many countries have explicitly recognized that they do not have sufficient capacity to face the new transnational forms of crime, particularly organized and economic crime, including corruption and money-laundering, environmental offences and increasing violence. The lack of qualified staff is a prevalent problem, and the training of criminal justice personnel a widely declared priority. There is a pressing need for expertise to deal with sophisticated new forms of criminality and for specialized personnel to handle criminal investigations and prosecutions. There have been requests for assistance in drafting legislation, in procuring equipment to enhance law enforcement capabilities, and in developing and applying bilateral or multilateral treaties and agreements.

53. There is also a growing awareness that the limited capabilities of many developing countries have been further taxed by the increasing demands on their criminal justice systems. They often operate under outdated legislation and imported procedures that are ill-suited to their conditions and the contemporary realities of crime. Economic crises and competing development priorities have worsened the crime problems in many countries, with serious effects on their law enforcement capacities. Furthermore, in countries in transition from a single-party to a multiparty political system, where protection of the State was formerly paramount, there is a move to institutionalize the observance of human rights and strike a balance between effective crime control and democratic principles. The goal of these countries is to ensure judicial independence to allow greater flexibility and build public confidence in the administration of justice. Since, however, the role and operation of the criminal justice system , including the police, prosecution, legal defence, courts and prisons, are in a process of change, organized crime finds fertile ground for expanding its activities.

54. A fundamental purpose of international cooperation is to contribute to the creation of self-reliant capacities in developing countries, as well as countries in transition. Strengthened technical cooperation in the fight against transnational organized crime should be viewed as a contribution to this end. Programme activities should be geared to developing expertise, especially in countries where it is scarce, and to promoting the highest standards of professionalism and specialization. Training and upgrading the skills of personnel working in the various areas of criminal justice is considered crucial. Adequate support of Member Sates in this field would require that appropriate expertise be identified and material developed that would cater to the specific requirements of each region or each group of trainees. Furthermore, effective channels of communication are necessary in order to assess needs and prevailing circumstances, in order to tailor training activities to these needs.

55. While most technical cooperation activities rely on voluntary contributions from Member States and funding agencies, the infrastructure for elaborating proposals, assessing needs, organizing and implementing projects and providing administrative support and the required follow-up should be developed and built into the basic framework of any global strategy. The new post-cold-war framework of international relations is relatively free of the impediments of the past that resulted from narrow political considerations. In this favourable environment, with the international community sharing the same values, the Conference represents the appropriate forum for Member States to express all the commitment, political will and unwavering determination that are necessary to strengthen multilateral cooperation, taking global action against transnational organized crime a step further,with concrete and practical measures for implementation.[15]

Notes

[1]Rainer Schmidt-Nothen, "Der lange Marsch durch viele Konferenzen. Es gibt noch viel zu tun: Vertraege und Abkommen, die dem Kampf gegen das verbrechen dienen' [The long march through many conferences. There is still much to be done: treaties and agreements supporting the fight against crime], Kriminalistik, vol. 41, (1987), pp. 8-9.

[2]Richard A. Martin, "Problems in international law enforcement", Fordham International Law Journal, vol. 14, No. 3 (1990-1991), p.521.

[3]Ibid. p. 522.

[4]See Fleur Keyser-Ringnalda, "European integration with regard to the confiscation of the proceeds of crime", paper compiled for the Tenth International Symposium on Economic Crime, Cambridge, July 1992.

[5]See Reuters, 1993, "Italy: Mafia looks forward to Europe without frontiers", CJ Europe, vol. 3, No. 1 (January-February), p. 15.

[6]See Bruce Zagaris and Sheila Castilla, "Implementation of a worldwide anti-money laundering system: constructing an international financial regime" (Police Executive Research Forum, Washington, July 1993).

[7]European Treaty Series No. 141 (1990).

[8]Model regulations concerning laundering offences connected to illicit drug trafficking and related offences, adopted at the eleventh regular session of the Inter-American Drug Abuse Commission, held at Punta del Este from 10 to 13 March 1992.

[9]See Cyrille Fijnaut, "Policing Western Europe: Interpol, TREVI and Europol", Police Studies, vol. 15, No. 3, pp. 101-106, and H. F. Markus Mohler, "A proposal for a European security space", CJ Europe, vol. 1, No. 1.

[10]Ethan A. Nadelmann, Cops Across Borders (University Park, Pennsylvania, Pennsylvania State University Press, 1993), p. 9.

[11]See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September, 1990: Report Prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. IV, sect. C, para. 253.

[12]Discussion document on the World Ministerial Conference on organized transnational crime (Economic and Social Council resolution 1994/12, annex) para. 9.

[13]Official Records of the Economic and Social Council, 1994, Supplement No. 11 (E/1994/31), chap. II, para. 25.

[14]See General Assembly resolutions 44/71, 45/116, 45/117, 45/118, 45/119, 45/121, 46/152, 47/87, 48/102 and 48/103, and Economic and Social Council resolutions 1989/62, 1989/70, 1992/22 of 30 July 1992, 1993/29, 1993/30 and 1994/12.

[15]See the report of the Secretary-General on the status of preparation of the World Ministerial Conference on Organized Transnational Crime (E/CN.15/1994/4/Add.3), paras. 26-27.